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No. 94-870

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

RAFAEL GARCIA,
Petitioner,
v.
CITY OF CHICAGO, JACK O'MALLEY, State's Attorney of Cook County, MICHAEL F. SHEAHAN, Sheriff of Cook County, and C. RICHARD ENGLISH,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENT CITY OF CHICAGO IN OPPOSITION

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QUESTIONS PRESENTED*

1. Whether, in cases in which the police have probable cause to believe that an individual possesses a controlled substance, the Constitution requires the police to perform a cobalt thiocyanate spot test on the substance before they may charge the individual with that offense.

2. Whether the Constitution requires an arresting authority to conduct a drug test on a substance seized from an arrestee who is in custody pending trial and to disclose its result more quickly than at the scheduled preliminary hearing, which is held within 30 days of arrest.

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* We address only the questions presented with respect to the City of Chicago. The remaining questions presented in the petition are directed at Jack O'Malley, Michael F. Sheahan, and C. Richard English. Those respondents are officials of Cook County, Illinois. We do not represent those respondents, and this brief is not filed on their behalf.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (Pet. App. 1-18) is reported at 24 F.3d 966. The opinions of the United States District Court for the Northern District of Illinois (Pet. App. 20-40) are unreported.

STATEMENT

On March 15, 1991, a Chicago police officer arrested petitioner Rafael Garcia ("Garcia") after observing a bag containing white powder at his feet. Pet. App. 1. Garcia was injured during the course of arrest and was taken to a local hospital, where he remained in custody.

Id. at 1-2. The next day, while Garcia remained hospitalized, counsel was appointed for him; and a judge found probable cause to charge him with possession of a controlled substance. *Id.* at 2. Because Garcia was then on probation and also had a bond forfeiture warrant outstanding, the court issued a probation violator's warrant, and set bond on both that charge and the charge of possession of a controlled substance. *Id.* at 1-2. Garcia did not make bond. *Id.* at 2.

On March 18, the court scheduled a preliminary hearing for April 10, 1991.[1] On March 20, Garcia was transferred from the hospital to Cook County Jail. Pet. App. 2, 24. On March 26, the City of Chicago's Police Department's laboratory tested the white powder seized at Garcia's arrest and found that it did not contain any controlled substance. *Id.* at 2. The laboratory communicated that information to the prosecutor (the office of the State's Attorney for Cook County), and at the preliminary hearing on April 10, the court granted the prosecution's request to dismiss the case. *Ibid.* Garcia then filed an action under 42 U.S.C. § 1983 against the City of Chicago; Chicago Police Officer Anna Gall; Cook County State's Attorney Jack O'Malley; Cook County Sheriff Michael Sheahan; the Cook County Department of Corrections; and then-acting Executive Director of Cook County Jail C. Richard English.[2] Garcia sought damages for his allegedly unconstitutional arrest and detention.

Ruling on the defendants' motions to dismiss Garcia's complaint, the district court concluded that Garcia's claims against the State's Attorney were barred by the

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[1] Under Illinois law, a felony arrestee is entitled to a preliminary hearing within 30 days of arrest. See 725 ILCS paras. 5/109-3, 5/109-3.1 (1992).

[2] As we explain elsewhere, we address only the claims against the City of Chicago. See *supra* at i n.*; *infra* at 3-4.

Eleventh Amendment (Pet. App. 22-23), and that the Constitution did not require Garcia's presence at the probable cause hearing held on the day after his arrest (*id.* at 24-26). Those claims were therefore dismissed. The court also ruled that the complaint adequately alleged an excessive force claim against the arresting officer. *Id.* at 24-26. Garcia sought reconsideration of the ruling that his probable cause hearing was constitutionally sufficient without his presence; he also sought leave to file a second amended complaint. The district court denied the motion to reconsider (*id.* at 28-29), denied leave to file the amended complaint (*id.* at 31), and also held that Garcia's arrest was supported by probable cause (*id.* at 29-30).

Garcia then filed a third amended complaint against only the City of Chicago and Officer Gall. The City defendants again filed a motion to dismiss, which the district court granted in part. The court concluded that if the officer found a bag containing white powder at Garcia's feet, she would have had probable cause to arrest him, defeating his false arrest claim (*id.* at 33-34); that the City's policy of not providing each of its police districts with cobalt thiocyanate kits in order to do spot-testing of suspected controlled substances did not violate the Constitution (*id.* at 35-36); and that the City's alleged policies of failing to perform tests on suspected controlled substances at the Police Department's laboratory with sufficient speed, and failing to notify the prosecutor, defense, or court of negative test results with sufficient speed, also failed to state meritorious claims (*id.* at 36-39). The court did not dismiss Garcia's claim of excessive force in the course of the arrest or the false arrest claim based on Garcia's allegations that Gall planted the bag of white powder at his feet. *Id.* at 32, 39. The court also ruled that damages flowing from Garcia's failure to make bond could be considered as part of Garcia's surviving claim for false arrest. *Id.* at 34-35.

Thereafter, Garcia settled his excessive force claim and false arrest claim against the City and the arresting officer. He then appealed, contesting the district court's dismissal of the claims against the State's Attorney, the Cook County Sheriff and the Director of the Cook County Department of Corrections, as well as his claims attacking the City's policies for testing controlled substances. The court of appeals held, first, that the claims against the State's Attorney were barred by the Eleventh Amendment (Pet. App. 4); second, that the Constitution did not grant Garcia a right personally to attend his probable cause hearing (*id.* at 4-5), third, that because Garcia's arrest was supported by probable cause, the Constitution did not require the City to conduct a cobalt thiocyanate spot test (*id.* at 6-7); and fourth, that the City's laboratory did not unconstitutionally delay disclosing the results of the test on the white powder, since the results were disclosed in time for the next scheduled court hearing, held within 30 days of Garcia's arrest (*id.* at 7-9).

ARGUMENT

Garcia has settled his claims against the officer who arrested him, and hence the only remaining municipal defendant is the City of Chicago. Garcia can prevail against the City only if he identifies some policy, custom, or practice of the City that inflicted constitutional injury upon him. *E.g., Monell v. Department of Social Services,* 436 U.S. 658, 694 (1978). While this Court held in *Gerstein v. Pugh,* 420 U.S. 103 (1975), that the Fourth Amendment grants a person arrested without a warrant the right to a prompt post-arrest judicial determination that the arrest is supported by probable cause, Garcia does not contend that the City has a policy, custom, or practice of either arresting individuals without probable cause, or failing to provide them with reasonably prompt probable cause hearings. Thus, his complaint states no claim under *Gerstein.*[3] Nevertheless, Garcia seeks to impose constitutional requirements on police throughout the country that exceed the standard of probable cause—specifically, Garcia contends that police should be required to do scientific testing to buttress arrests made on probable cause, and that they should be required to expedite their investigation of an arrestee even after a judicial officer has found probable cause to support an arrest. Whatever the

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[3] While portions of Garcia's petition suggest that his claim of an entitlement to be personally present at his probable cause hearing is made against the City, as the court of appeals correctly observed, Garcia failed to preserve this claim against the City. See Pet. App. 5 n.4. In addition, even if Garcia were correct as a general matter that an arrestee is constitutionally entitled personally to attend a probable cause hearing, he does not explain why or how this requirement would apply to hospitalized arrestees like Garcia. Nor does Garcia allege that he was even medically capable of attending his probable cause hearing. And if there were no violation of Garcia's rights because he was hospitalized, he lacks standing to forward a policy claim against the City under Section 1983 based on its treatment of persons not needing medical attention. See *City of Los Angeles v. Heller,* 475 U.S. 796 (1986) (per curiam).

merits of Garcia's suggestions as a matter of law enforcement policy, there is no constitutional basis for deviating from the standard of probable cause. Thus, neither of Garcia's claims has merit.

1. In the court of appeals, Garcia did not dispute that there was probable cause to arrest him. As that court observed, "Garcia concedes that finding a white powder in a person's possession provides probable cause to arrest that person for possession of cocaine." Pet. App. 6. And, as we explain above, Garcia has never claimed that the City has a custom, policy or practice of arresting individuals without probable cause. Instead, Garcia's argument is that "some type of confirmatory test should have been done" (Pet. 35); in the court below Garcia contended "the cobalt thiocyanate spot test" was constitutionally required (see Pet. App. 7). Nothing in the Constitution, however, obligates an arresting authority to perform any further investigation once it makes an arrest on probable cause.

In *Baker v. McCollan*, 443 U.S. 137 (1979), for example, McCollan claimed that his constitutional rights were violated because, after his arrest, Sheriff Baker failed to investigate his claim that he was not the person named in the warrant on which he had been arrested. McCollan argued that the Sheriff could have quickly and easily compared his photograph and fingerprints to those of the person named in the warrant, but unreasonably failed to do so, causing McCollan to be incarcerated over a three-day weekend until the error was discovered. See *id.* at 139-42. This Court rejected McCollan's claim. The Court observed that the Fourth Amendment requires only that a judicial officer make a determination whether there is probable cause for an arrest either before or promptly after an arrest, and since McCollan had been arrested on a warrant issued after such a determination, his detention "met the standards of the Fourth Amend-

ment." *Id.* at 144. McCollan's due process claim fared no better:

> Given the requirements that arrests be made only on probable cause and that one detained be accorded a speedy trial, we do not think a sheriff executing an arrest warrant is required by the Constitution to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent. Nor is the official charged with maintaining custody of the accused named in the warrant required by the Constitution to perform an error-free investigation of such a claim. The ultimate determination of such claims of innocence is placed in the hands of the judge and the jury.

Id. at 145-46 (footnote omitted). Accord *Albright v. Oliver*, 114 S. Ct. 807, 818 (1994) (Kennedy, J., concurring in the judgment).

This principle disposes of Garcia's claim. While he claims that it would be easy and efficient for the City to stock cobalt thiocyanate spot tests in every police district to use on all suspected cocaine seized from arrestees, this claim is no stronger than McCollan's claim that it would have been easy for the sheriff to check his photograph and fingerprints against that of the individual named in the warrant. We know of no authority inconsistent with the proposition on which the decision of the court of appeals here rests—"once police officers have discovered sufficient facts to establish probable cause, they have no constitutional obligation to conduct any further investigation in the hopes of uncovering potentially exculpatory evidence." Pet. App. 6 (quoting *Schertz v. Waupaca County*, 875 F.2d 578, 583 (7th Cir. 1989)).

Indeed, the only authority Garcia cites in this portion of his petition is *Pennington v. Hobson*, 719 F. Supp. 760 (S.D. Ind. 1989), but that decision rejects his argument. In *Pennington*, the district court concluded that

the Constitution did not afford an arrestee a right to any type of expedited laboratory tests on suspected narcotics. See *id.* at 777. Thus there is no split of authority—much less a split among the circuits—on the question presented in the petition. And even if at some point a delay in conducting laboratory tests could violate the Due Process Clause,[4] the court of appeals did not hold that the Constitution never imposes a duty to investigate upon the police, but rather only that the testing delays alleged by Garcia were not constitutionally unreasonable. See Pet. App. 7. While it would perhaps be troubling if the City had a policy of conducting no tests whatsoever on substances seized from arrestees who denied that those substances were illicit drugs, Garcia does not claim that the City has such a policy. Rather, he alleged that the City conducts drug tests within 10 to 20 days of arrest—and the court of appeals correctly held that this is constitutionally sufficient. What is more, if defense counsel believes that it is in his client's interest to obtain expedited testing of a substance seized from his client, counsel may arrange for such testing by the defense. As the court of appeals noted, the Compulsory Process Clause of the Sixth Amendment and Ill. Sup. Ct. R. 412(a)(v) secure the defense's right to obtain a sample of the powder seized during an arrest and to test it. Pet. App. 7 n.5. Thus, arrestees are not at the mercy of the City's decisions about how quickly to test substances; they can expedite testing themselves. For these reasons, the City's policies are not fundamentally unfair, are consistent with all the precedents to consider this question, and satisfy the only standard specified in the Constitution itself for seizing an arrestee prior to trial—probable cause.

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[4] *Baker v. McCollan* itself suggests that at some point the Due Process Clause could impose some duty to investigate an arrestee's claims of innocence. See 443 U.S. at 145 ("we may assume, arguendo, that, depending on what procedures the State affords defendants following arrests and prior to actual trial, mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of 'liberty without due process of law' ").

2. Garcia's other claim against the City is that "his continued detention after the negative drug test report was made was unreasonable in duration and therefore unconstitutional." Pet. 32. What happened here, of course, is that the City disclosed the test results to the prosecutor—who, unlike the City's laboratory, is in the position to know whether the defendant is charged only with test-related drug charges, or with other crimes as well—and that disclosure was made before Garcia's next scheduled court appearance. Indeed, the City tested the white powder seized at Garcia's arrest within ten days, and reported the results of its test to the State's Attorney's office in time for those results to be disclosed at the preliminary hearing held 26 days after the arrest, leading the prosecution to dismiss the case against Garcia. Pet. App. 1-2. Thus, test results were obtained and disclosed to the prosecution by the time of the preliminary hearing held within 30 days of arrest.

Such a procedure comports with the Constitution. There is not even a colorable Fourth Amendment objection to this procedure. In *Gerstein v. Pugh*, the Court held that the Fourth Amendment requires that a judicial officer make a probable cause determination promptly after a warrantless arrest (see 420 U.S. at 113-14, 124-25), but it also held that such a determination is sufficient to bring the arrestee to trial without need of any subsequent reexamination of probable cause at a preliminary hearing or otherwise (see *id.* at 119-24). Garcia received a prompt post-arrest judicial determination of probable cause; thus the Fourth Amendment was satisfied here.[5]

Dressed in due process garb, Garcia's claim fares little better. The City disclosed the negative drug test to the

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[5] In *County of Riverside v. McLaughlin*, 111 S. Ct. 1661 (1991), the Court elaborated upon *Gerstein*'s requirement of a prompt hearing and held that the probable cause hearing must ordinarily be held within 48 hours of arrest. See *id.* at 1670. Garcia has never claimed that the City does not comply with this requirement.

prosecution, which in turn disclosed it to the court and the defense, not only before trial, but prior to the preliminary hearing, and in sufficient time to enable the prosecution to dismiss the charges against Garcia at that hearing held less than a month after his arrest. Assuming that a duty to disclose exculpatory evidence during pretrial proceedings can be derived from the due process right to disclosure of exculpatory evidence before trial recognized by *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, nothing in these cases requires that such disclosures be expedited so that a trial or hearing date can be advanced. As *Baker v. McCollan* explains, such timing issues are governed not by the Fourth Amendment or the Due Process Clause of the Fourteenth Amendment, but rather by the Speedy Trial Clause of the Sixth Amendment.

In any event, Garcia makes no allegation that the City unreasonably delayed informing the prosecution of the test results; indeed, there is nothing in Garcia's complaint that even suggests that the City did anything other than send those results to the prosecution as soon as they were available. The complaint does not explain why the failure to release Garcia earlier was caused by a policy of the City, and not merely the State's Attorney's failure to disclose results it had received from the City sooner. While Garcia, of course, need only plead sufficiently to give the City fair notice of the nature of the policy claim against it (see *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 113 S. Ct 1160 (1993)), nothing in the complaint provides even the barest notice why Garcia taxes the City with the failure to advance the preliminary hearing once the test results were available.[6] Nor does the complaint explain why

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[6] All the complaint alleges is that "delay in communicating the test results from March 26th to April 10 is an unreasonable amount of time" and that "following the same procedures and delays for incarcerated suspects as are followed for suspects out on bail is an unreasonable procedure given the usual time delays involved . . . ." R. 259 paras. 21-22.

Garcia pins on the City the delay in reinstating his probation. As the court of appeals explained, Garcia could not properly be released until his probation was reinstated, and that did not occur until after two days after his preliminary hearing. Pet. App. 7-8. Thus this complaint fails even notice pleading of a policy claim—the complaint does not explain how the City is at fault for the delay in releasing him after the test results were available, or how the notice of test results given to the prosecution was deficient.

Even if the Constitution may in some cases require expediting the disclosure of exculpatory information, that is not the same as requiring immediate disclosure. The Constitution does not require a perfect criminal justice system, but rather only a reasonably fair one. As this Court observed in *County of Riverside v. McLaughlin*, 111 S. Ct. 1661 (1991), in deciding how quickly the system must process arrestees, courts must remain cognizant of the practical realities of the criminal justice system. See *id.* at 1670. The system is already severely overburdened. Speeding up the testing process, and seeking the release, prior to the scheduled preliminary hearing, of those who test negative (and are not also held on other charges) would require large expenditures of resources—for staff to identify cases in which testing should be expedited, and the communication of test results to the prosecution hastened, and for more testing equipment, more technicians, more prosecutors, and more judges. It is not constitutionally unreasonable for a municipality to conclude that the costs of such measures do not justify the benefits flowing from a few cases in which the arrestee might be released from custody a few days earlier, if only the test had occurred earlier, the results communicated to the prosecution sooner, and the preliminary hearing then advanced. This is especially true because under Illinois law, as we explain above, the defense can itself perform expedited testing if it wishes. In short, if it is constitutionally permissible to postpone a

preliminary hearing for 30 days—as Illinois does without challenge from Garcia—it is equally reasonable to complete the process of obtaining and disclosing test results on a like schedule.

While Garcia never claims there is a conflict in the circuits on the question he presents in his petition, he does cite two decisions for the proposition that the Constitution forbids "continuing detention after proof which makes it objectively impossible that [the arrestee] committed the crime charged." Pet. App. 32-33. But both cases involved the suppression of exculpatory evidence, rather than the failure to expedite its disclosure even sooner than the next scheduled hearing.

In *Sanders v. English*, 950 F.2d 1152 (5th Cir. 1992), the arresting officer received overwhelming evidence of Sanders' innocence, yet failed to notify the prosecutor or his superior officer. See *id.* at 1156-58. As a result, Sanders was not released from jail until 50 days after his arrest, when his attorney presented exculpatory evidence to the prosecutor. See *id.* at 1158. Similarly, in *Gay v. Wall*, 761 F.2d 175 (4th Cir. 1985), the defendant police officers intentionally kept Gay in custody after they "had actual knowledge of his innocence," deciding to "detain[] him until they could 'find the right man.'" *Id.* at 178. Here, the City is not alleged to have a policy of concealing exculpatory evidence from the prosecution, defense or the court. Rather, its policy is to conduct laboratory tests and disclose their results prior to the preliminary hearing. That policy ensures that arrestees will have the benefit of any exculpatory evidence the City's laboratory generates within 30 days of their arrest. Moreover, because the complaint does not explain why the City's policies are at fault for the failure to advance a preliminary hearing once a negative test result occurs, and since Illinois law provides the defense with access to exculpatory evidence and a means to expedite its testing and disclosure, this case is a far cry from the intentional concealment of exculpatory evidence un-

available to the defense that was at issue in *Sanders* and *Gay*.

In short, Garcia cannot identify a split of authority in the lower courts, any reason why the City's policies are responsible for the failure to release him until his preliminary hearing, or any feature of the Illinois preliminary hearing system that prevents the defendant himself from obtaining expedited testing of substances seized at the time of arrest. There is thus no merit to Garcia's claims.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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